

## §210.11

## 31 CFR Ch. II (7–1–08 Edition)

### §210.11 Limited liability.

(a) *Right to limit its liability.* If an RDFI does not have actual or constructive knowledge of the death or legal incapacity of a recipient or the death of a beneficiary at the time it receives one or more benefit payments on behalf of the recipient, the RDFI's liability to the agency for those payments shall be limited to:

(1) An amount equal to: (i) The amount in the account at the time the RDFI receives the notice of reclamation and has had a reasonable opportunity (not to exceed one business day) to act on the notice, plus any additional benefit payments made to the account by the agency before the RDFI responds in full to the notice of reclamation, or

(ii) The outstanding total, whichever is less; plus

(2) If the agency is unable to collect the entire outstanding total, an additional amount equal to:

(i) The benefit payments received by the RDFI from the agency within 45 days after the death or legal incapacity of the recipient or death of the beneficiary, or

(ii) The balance of the outstanding total, whichever is less.

(b) *Qualification for limited liability.* In order to limit its liability as provided in this section, an RDFI shall:

(1) Certify that at the time the benefit payments were credited to or withdrawn from the account, the RDFI had no actual or constructive knowledge of the death or legal incapacity of the recipient or death of the beneficiary;

(2) Certify the date the RDFI first had actual or constructive knowledge of the death or legal incapacity of the recipient or death of the beneficiary, regardless of how and where such information was obtained;

(3)(i) In cases involving the reclamation of Social Security Federal Old-Age, Survivors, and Disability Insurance benefit payments, or benefit payments certified by the Railroad Retirement Board or the Department of Veterans' Affairs, provide the name and last known address of the following person(s):

(A) The recipient and any co-owner(s) of the recipient's account;

(B) All other person(s) authorized to withdraw funds from the recipient's account; and

(C) All person(s) who withdrew funds from the recipient's account after the death or legal incapacity of the recipient or death of the beneficiary.

(ii) If persons are not identified for any of these subcategories, the RDFI must certify that no such information is available and why no such information is available; and

(4) Fully and accurately complete all certifications on the notice of reclamation and comply with the requirements of this part.

(c) *Payment of limited liability amount.* If the RDFI qualifies for limited liability under this subpart, it shall immediately return to the Federal Government the amount specified in §210.11(a)(1). The agency will then attempt to collect the amount of the outstanding total not returned by the RDFI. If the agency is unable to collect that amount, the Federal Government will instruct the appropriate Federal Reserve Bank to debit the account utilized by the RDFI at that Federal Reserve Bank for the amount specified in §210.11(a)(2).

(d) *Violation of subpart B.* An RDFI that fails to comply with any provision of this subpart in a timely and accurate manner, including but not limited to the certification requirements at §210.11(b) and the notice requirements at §210.13, shall be liable to the Federal Government for any loss resulting from its act or omission. Any such liability shall be in addition to the amount(s) for which the RDFI is liable under §210.10 or §210.11, as applicable.

[64 FR 17487, Apr. 9, 1999, as amended at 69 FR 13189, Mar. 19, 2004]

### §210.12 RDFI's rights of recovery.

(a) *Matters between the RDFI and its customer.* This subpart does not authorize or direct an RDFI to debit or otherwise affect the account of a recipient. Nothing in this subpart shall be construed to affect the right an RDFI has under state law or the RDFI's contract with a recipient to recover any amount from the recipient's account.

(b) *Liability unaffected.* The liability of the RDFI under this subpart is not affected by actions taken by the RDFI

to recover any portion of the outstanding total from any party.

#### § 210.13 Notice to account owners.

*Provision of notice by RDFI.* Upon receipt by an RDFI of a notice of reclamation, the RDFI immediately shall mail to the last known address of the account owner(s) or otherwise provide to the account owner(s) a copy of any notice required by the Service to be provided to account owners as specified in the Green Book. Proof that this notice was sent may be required by the Service.

#### § 210.14 Erroneous death information.

(a) *Notification of error to the agency.* If, after the RDFI responds fully to the notice of reclamation, the RDFI learns that the recipient or beneficiary is not dead or legally incapacitated or that the date of death is incorrect, the RDFI shall inform the agency that certified the underlying payment(s) and directed the Service to reclaim the funds in dispute.

(b) *Resolution of dispute.* The agency that certified the underlying payment(s) and directed the Service to reclaim the funds will attempt to resolve the dispute with the RDFI in a timely manner. If the agency determines that the reclamation was improper, in whole or in part, the agency shall notify the RDFI and shall return the amount of the improperly reclaimed funds to the RDFI. Upon certification by the agency of an improper reclamation, the Service may instruct the appropriate Federal Reserve Bank to credit the account utilized by the RDFI at the Federal Reserve Bank in the amount of the improperly reclaimed funds.

[64 FR 17487, Apr. 9, 1999, as amended at 69 FR 13189, Mar. 19, 2004]

#### APPENDIX A TO PART 210—STANDARD DISCLOSURE FOR POINT-OF-PURCHASE CONVERSION—POSTED NOTICE

##### NOTICE TO CUSTOMERS PRESENTING CHECKS

*Conversion of Checks*—If you are presenting a check to the cashier, your check will be converted into an electronic fund transfer. When you hand your completed, signed check to the cashier, your check will be copied. The account information from your check will be used to make an electronic

fund transfer from your account in the amount of the check. The cashier will void the check and return it to you.

*Insufficient Funds*—The electronic fund transfer from your account will usually occur within 24 hours, which is faster than a check is normally processed. Do not present a check to the cashier unless there are sufficient funds available in your checking account. If the electronic fund transfer cannot be completed because of insufficient funds, we may try to make the transfer up to two more times [and we will charge you a one-time fee of \$\_\_\_\_\_, which we will also collect by electronic fund transfer].

*Authorization*—By reading this notice and handing your check to the cashier, you authorize the conversion of your check into an electronic fund transfer. If the electronic fund transfer cannot be processed for technical reasons, you authorize us to process the copy of your original check.

*More Information*—A pamphlet with more information about this process, including information about your rights under Federal law, is available from the cashier. [You may also call \_\_\_\_\_ or visit our Internet site at \_\_\_\_\_ for detailed information.]

NOTE: This notice must be conspicuous. This means that the notice should be printed on a sign that is prominently posted at the location where checks are presented to a cashier, in such a way that it is clearly visible from several feet away to customers waiting to present checks.

[67 FR 17903, Apr. 11, 2002]

#### APPENDIX B TO PART 210—STANDARD DISCLOSURE FOR POINT-OF-PURCHASE CONVERSION—BROCHURE OR PAMPHLET

*What is point-of-purchase check conversion?* Point-of-purchase check conversion is the process of converting checks that customers present to cashiers into electronic fund transfers. “Electronic fund transfer” is the term used to refer to the process in which we electronically instruct your financial institution to transfer funds from your account to our account, rather than processing your check. When you hand a check to the cashier, your check is copied and the account information from your check is used to make an electronic fund transfer from your account. The cashier voids your check and returns it to you. By presenting your check at a location where a sign notifies you that your check will be converted, you authorize the conversion of your check into an electronic fund transfer in this manner.

*How quickly will funds be transferred from my account?* The electronic fund transfer from your account will usually occur within 24 hours, which is faster than a check is normally processed. Therefore, you should be